

1983 December 21

[A. LOIZOU, J.]

KATHY SKOULLOU (EX KOBRA NIKBACHT),

Petitioner.

v.

AUGUSTINOS SKOULLOS,

Respondent.

(*Matrimonial Petition No. 12/81*).

Matrimonial Causes—Divorce—Cruelty—Husband hitting wife on the head and seriously injuring her—Other incidents of ill-treatment—Cruelty proved—Decree nisi to the wife.

5 *Children—Custody—Access—Child of tender years—Custody to the mother with right of access to father.*

This was a wife's petition for divorce on the ground of cruelty in which there was, also, sought the custody of the issue of the marriage. In September, 1981 the respondent hit the petitioner on the head with a hand-bag and injured her to such an extent
10 that she had to be taken to the Nicosia General Hospital where her wound was given seven stitches. This was not the only incident between the parties for there have been friction and quarrels between them and incidents of ill-treatment by the respondent for a long time.

15 The only issue of the marriage, a boy born on the 13th January, 1976, has since December, 1983 been living with a relative.

The petitioner was an educated person who studied hotel management and was working for a building contractor in
20 the mornings as a secretary at a monthly salary of £115.-. In the afternoon she was engaged for reward at home in dress-making and knitting and in the evenings she was working at a pub, which was a family enterprise ran by its owners who were neighbours and friends of the petitioner. The respondent

had three children from a previous marriage which were left with his mother. He did not seem to have been successful in his work and in any event he was continuously running in financial difficulties on account of his gambling habits. The petitioner was dedicated to her child and was concerned for its proper upbringing. She stated that if she was entrusted with his custody she will give up her evening work and work more at home in order to supplement her income from the construction firm.

The petitioner was of the Moslem faith and the respondent who was a Roman Catholic wished his child to be brought up in that religion. To this the petitioner had no objection.

Held, (1) that the petitioner has proved her case of cruelty against the respondent by showing a persistent cruelty on his part on her, who should not be asked to endure such conduct which is in no way excusable and that the facts as accepted by the Court satisfy the requirements of legal cruelty and justify the issue of a decree of divorce nisi to the petitioner on the ground of the respondent's cruelty.

(2) That considering the tender years of the boy and how important is for his normal, physical, psychological and sentimental development, the care of the mother, suitable as it is in all respects, his custody will be entrusted to the petitioner who can offer him a comfortable home and the motherly warmth he needs; that it will be, however, in the interest of the child that the respondent father should have access to him at all reasonable hours of the day but in such a way and to such extent that it will not interfere with his schooling and periods of rest.

Held, further, that the fact that the child attends a Greek elementary school and the mother, who is not conversant with the Greek language will not be in a position to help him with his lessons is not a reason to deny to the child the care of his mother because a considerate mother as the petitioner appears to be can make other arrangements and in co-operation with the father, if he wishes, to help the child in his education.

Decree nisi granted. Custody of the child to the petitioner-mother.

Cases referred to:

- Peratikos v. Peratikos* (1979) 1 C.L.R. 341;
- Jabbour v. Jabbour* (1981) 1 C.L.R. 315;
- Joseph v. Joseph* (1982) 1 C.L.R. 95.

5 **Matrimonial petition.**

Petition by the wife for dissolution of marriage on the ground of husband's cruelty.

Th. Montis with *N. Michaelides*, for the petitioner.

E. Myrianthefs, for the respondent.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is a wife's petition for divorce on the ground of cruelty by which and ancillary thereto the custody of the issue of the marriage is also sought.

15 The respondent/husband who was duly served entered an appearance and contested the proceedings.

The petitioner comes from Iran and belongs to the Moslem faith. The respondent a Cypriot, is a member of the Maronite Community and a Roman Catholic. They met in London and they were married on the 21st day of April 1975, at the Register Office in the District of Hampstead in the London Borough of Camden under the provisions of the Marriage Act, 1949.

20 After their marriage they lived for four months in London and then they went to Iran where they stayed for four and a half years. They moved then to Cyprus and lived in Nicosia until September 1981, when as a result of an incident at which after an argument the respondent hit her on the head with a had-bag and injured her to such an extent that she had to be taken to the Nicosia General Hospital where her wound was given seven stitches, she left the conjugal home and went and settled at a flat on her own. She took with her the only issue of the marriage, a boy that was born on the 13th January 1976.

25 This incident, which is not denied by the respondent, was reported to the Police. The respondent was prosecuted and sentenced to £100 fine and to four months' imprisonment, suspended for three years.

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The respondent then for financial reasons left the flat where the parties had been living together and he went and lived at his barber-shop, which he opened with money brought by the petitioner from Iran, and ultimately he took his child to stay with him.

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This was not the only incident between the parties. There had been friction and quarrels between them and incidents of ill-treatment by the respondent for a long time. The main cause of friction between them was his gambling habits which brought about financial difficulties. In fact the petitioner left respondent as he was not paying the rent, he was not paying for the food, she had to work, to go home wash and prepare the meals and, as she put it, on top of that he was hitting her in the presence of the child, the child was crying and the petitioner was then pushing the child in the bed-room and closing the door.

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The respondent, however, imposed himself on her and spent some time at her new flat. She then left him again for the same reasons and she went to Greece for a while, without the child as he had been put, at the request of the respondent, on the stop-list of the Immigration Authorities.

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Since December 1983, the child has been taken to a relative of his, but that is a temporary arrangement and I shall be dealing with the child's circumstances and upbringing later in this judgment.

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On the evidence before me I have no difficulty in concluding that the petitioner has proved her case of cruelty against the respondent by showing a persistent cruelty on his part on her, who should not be asked to endure such conduct which is in no way excusable. I need not now refer to the legal principles applicable to the issues arising in this case as the question of legal cruelty has been dealt with extensively by this Court in a number of cases. (See inter alia *Peratikos v. Peratikos* (1979) 1 C.L.R. 341; *Jabbour v. Jabbour* (1981) 1 C.L.R. 315; *Joseph v. Joseph* (1982) 1 C.L.R. 95).

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The facts as accepted by me satisfy the requirements of legal cruelty justifying the issue of a decree of divorce nisi to the petitioner on the ground of the respondent's cruelty.

The climax of the ill-treatment of the petitioner by the respondent was the last incident for which there has been a criminal prosecution, yet that was not the only one. There had preceded it and followed it other acts and the conduct of
5 the respondent has to be judged up to a point by reference to the victim's capacity for endurance as that capacity is, or ought to be known to him and is clear that she has reached the limit and he should have known about it. (See Rayden on Divorce 8th edition paragraph 85 p. 128).

10 I turn now to the question of the custody of the child. In suits for judicial separation, nullity or dissolution of marriage or restitution of conjugal rights, the Court has jurisdiction to make orders for the custody or maintenance of children, although controversial matters as to custody are not discussed
15 at the hearing. Where custody is prayed in a petition or answer or a claim therefore is contained in an application under section 23 of the Matrimonial Causes Act, 1950, the Court can make provision in its decree for the custody of the children after hearing the parties or adjourn the question to Chambers. See
20 Rayden on Divorce (supra) p. 616.

Under section 26 of the Matrimonial Causes Act, 1950, "In any proceedings for divorce or nullity of marriage or judicial separation, the Court may from time to time, either before or by or
25 after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court".

30 With regard to the question of the custody I have had the opportunity of hearing the parties and also a Social Investigation Report which was produced by agreement of the parties. In effect it contains what the parties have stated before me in their
35 respective testimony and pertinent observations of the welfare officer who carried out the investigation and prepared same.

The petitioner is an educated person who studied hotel management and works for a building contractor in the mornings as a secretary at a monthly salary of £115.-. In the afternoon

she is engaged for reward at home in dress-making and knitting and in the evenings she works at the "Kalypto" pub at Ifigenias street Akropolis, which is a family enterprise ran by its owners who are neighbours and friends of the petitioner. The respondent has three children from a previous marriage, which were left with his mother. He does not seem to have been successful in his work and in any event he is continuously running in financial difficulties on account of his gambling habits. The petitioner has impressed me with her dedication to her child and her concern for its proper upbringing. She stated that if she is entrusted with his custody she will give up her evening work and work more at home in order to supplement her income from the construction firm.

As already said the child since the first of December, was moved from the barber-shop to stay with a lady but from the investigation carried out it has been ascertained that these arrangements are neither permanent nor could be considered suitable as the lady, to whom the respondent has entrusted the care of the boy works, though temporary she is unemployed, and the boy will not have the necessary care and she also cohabits with a married man who lives apart from his family. The question of the religious upbringing of the child was brought up in the course of the trial. The petitioner is of the Moslem faith, whereas the respondent is a Roman Catholic and wishes his child to be brought up in that religion. To this the petitioner has explicitly stated that she has no objection. Another issue raised against her having the custody of the child was that she is not conversant with the Greek language and that as the child attends a Greek elementary school she will not be in a position to help him with his lessons. I feel that this is not a reason to deny to the child the care of his mother, and I am sure that a considerate mother as the petitioner appears to be can make other arrangements and in co-operation with the father, if he wishes, to help the child in his education.

Considering the tender years of the boy and how important is for his normal, physical, psychological and sentimental development, the care of the mother, suitable as it is in all respects, I have decided to entrust his custody to the petitioner who can offer him a comfortable home and the motherly warmth he needs.

It will be, however, in the interest of the child that the respondent father should have access to him at all reasonable hours of the day but in such a way and to such extent that it will not interfere with his schooling and periods of rest.

- 5 In the result a decree of divorce nisi on the ground of cruelty is granted to the petitioner and an order entrusting the boy to her custody subject to the respondent's right of access is hereby also made.

- 10 The arrangements, however, that have to be made for the care and upbringing of the child including the question of maintenance which has been the subject of separate proceedings in any event so far, will be considered under the provisions of section 2 of the Maintenance Proceedings (Children's) Act 1958, together with the application for the making of this
15 decree absolute. Respondent to pay the costs of this petition.

Decree nisi granted.